

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Advisory Action dated October 20, 2008 and the Final Office Action dated July 3, 2008 are respectfully requested in view of the arguments and amendments presented herein.

This amendment is timely filed with a one-month extension of time.

Claims 26-59 are presently pending in the case. Claim 27 is amended to correct a grammatical error. Claim 30 is amended to depend from claim 27 to provide antecedent basis. No claims have been cancelled or added by the present response.

Applicants respectfully request that this amendment be entered. Applicants respectfully submit that the present amendment places the application in condition for allowance, as discussed in more detail below. Applicants also submit that the present amendment does not raise new issues or necessitate the undertaking of any additional search of the art, since all of the elements and their relationships now claimed were either earlier claimed or inherent in the claims as examined. Applicants also submit that the present amendment would place the application in better form for appeal, should the Office continue to dispute the patentability of the pending claims.

Applicants submit that these amendments clarify the claims, but do not in any way narrow the scope of the claims, such that no estoppel should be deemed to attach thereto. In particular, the claims have been amended to explicitly state that which was implicit in the original claim language.

Accordingly, no new matter has been added by the amendments and no estoppels are intended thereby.

#### **Examiner Interview**

Applicants thank Examiner Kishore for the interview conducted with Applicants' representative, Steve Helmer, at the U.S. Patent and Trademark Office on October 22, 2008. During the interview, Examiner Kishore indicated that the terminal disclaimers filed September 29, 2008 were not accepted because the attorney is not of record. Examiner Kishore indicated that the double patenting rejection is the only remaining issue, and it may be overcome by filing a proper terminal disclaimer.

### **Provisional Double Patenting - the '705 and '706 Applications**

The Examiner provisionally rejected claims 31-34, 39-43, 46, and 49-56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 28, 29, 32, 33, 35-49, and 51-58 of U.S. Application No. 10/245,705 (hereinafter the '705 Application).

The Examiner provisionally rejected claims 31-34, 39-43, 46, and 49-56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 26-43 of U.S. Patent Application No. 10/245,706 (hereinafter the '706 Application).

In response, Applicants request that the present case be allowed to issue, and the double patenting issue should be taken up in the pending '705 and '706 Applications. The present claims are otherwise in condition for allowance for the reasons described herein. Accordingly, the present case should be allowed to issue. See MPEP § 804.

In view of the above, Applicants respectfully request withdrawal of this ground of rejection.

### **Double Patenting - Eljamal et al and Patton et al**

The Examiner rejected claims 31-34, 39-43, 46, and 49-56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 and 13-16 of U.S. Patent 6,358,530 to Eljamal et al (hereinafter Eljamal) in view of U.S. Patent 5,364,838 to Rubsamen (Rubsamen).

The Examiner rejected claims 31-34, 39-43, 46, and 49-56 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 and 13-16 of U.S. Patent 5,997,848 to Patton et al. (Patton).

In response, while not expressing agreement or acquiescence, to further prosecution, Applicants are filing the enclosed Terminal Disclaimer (signed by an attorney being made of record by a Power of Attorney filed herewith) merely to remove any potential issue as to whether the claims of the above-identified application and those of either Eljamal or Patton in any way conflict. The submission of this Terminal Disclaimer is not intended to make any representation as to whether the invention defined by any of the claims of either the above-identified application or the

above-mentioned patent would have been obvious in view of the other or whether an obvious-type double patenting rejection would be appropriate if the enclosed terminal disclaimer were not filed.

In view of the above, Applicants respectfully request withdrawal of this rejection.

#### **Terminal Disclaimer Filed October 13, 2005**

On October 13, 2005, Applicants filed a Terminal Disclaimer over U.S. Patent Nos. 6,685,967 and 6,582,728. This Terminal Disclaimer was accepted by the U.S. Patent and Trademark Office. Applicants note, however, that these patents are also disclaimed in the present Terminal Disclaimer to ensure that the disclaimers are proper.

#### **Change of Title and Request for Corrected Filing Receipt**

Applicants also note that the present Reply amends the title of invention and a corresponding Request for Corrected Filing Receipt is being filed herewith.

#### **CONCLUSION**

In view of the foregoing, the Applicants submit that all outstanding issues in this case have been resolved, and that all pending claims in their current form are allowable. A Notice of Allowance is therefore respectfully requested.

If a telephone conference would expedite the prosecution of the subject application, the Examiner is requested to call the undersigned at (650) 631-3244.

Respectfully submitted,  
Nektar Therapeutics

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